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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/782,015 | 02/12/2001 | Edmund Y.M. Chein | 00115P002D | 2156 |
| 8791 | 7590 | 11/28/2003 | EXAMINER | |
| BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD, SEVENTH FLOOR LOS ANGELES, CA 90025 | | | GUPTA, ANISH | |
| | | ART UNIT | PAPER NUMBER | |
| | | | 1654 | |

DATE MAILED: 11/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------|-----------------|--------------------|
| Advisory Action | Application No. | Applicant(s) |
| | 09/782,015 | CHEIN, EDMUND Y.M. |
| Examiner | Art Unit | |
| Anish Gupta | 1654 | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 24 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) The period for reply expires 4 months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) ____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. The proposed drawing correction filed on ____ is a) approved or b) disapproved by the Examiner.
9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. Other: _____.

Continuation of 2. NOTE: Applicants added new claim 18, which would have be addressed in an office action and constitute new grounds for rejections..

Continuation of 5. does NOT place the application in condition for allowance because: Applicants argue, for the outstanding rejection, that Danielov et al. fails to teach a regimen to replenish hormones levels, rather than merely restoring the biological transfer system or metabolism of cells. However, Applicants claims are drawn to a composition. The reference teaches that composition. Thus, the limitation of the claims have been met. The replenishment of hormone levels is an intended use limitation and where the claimed and prior art products are identical or substantially identical in structure or composition, a prima facie case of either anticipation or obviousness has been established. In re Best, 195 USPQ 430, 433 (CCPA 1977). "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). Therefore, the prima facie case can be rebutted by evidence showing that the prior art products do not necessarily possess the characteristics of the claimed product. In re Best, *supra*.

Thus the rejection is maintained.

Brenda Brumback
11/28/03

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